IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5688 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VINODBHAI GORDHANBHAI PATEL & 1 - Petitioner(s)
Versus
RAMESHBHAI AMBALAL PATEL - Respondent(s)

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Appearance :

MR SR PATEL for Petitioner(s) : 1,DELETED for Petitioner(s) : 2,
None for Respondent(s) : 1,
MS PAURAMI B SHETH for Respondent(s) : 1.2.1, 1.2.2,1.2.3

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 13/04/2007

ORAL JUDGMENT

1. Present writ application is against the order passed by the Gujarat Revenue Tribunal in Revision Application TEN B.A.64 of 1988 [Patel

Vinodbhai Gordhanbhai v. Ambalal Kalidas Patel and another]. By the said order, the Gujarat Revenue Tribunal confirmed the order passed by the Deputy Collector directing remand of the matter to the learned Mamlatdar for decision on merits.

2. The case has a chequered history. It is alleged that somewhere in the year 1956, present respondent was unable to cultivate the land, therefore, he gave a notice to Gordhanbhai Kishorbhai Patel [since deceased] that he was to surrender the land. Parties appeared before the Mamlatdar and the Mamlatdar cum ALT by his order dated 28.6.56 allowed the application of the landlord and directed that the landlord be put in possession.

3. After introduction of Section 32[1B] in the Bombay Tenancy & Agricultural Lands Act,1948 the respondent made an application under Section 32[1B] before the Mamlatdar for restoration of possession. The respondent lost before the Mamlatdar, the matter ultimately went to the Gujarat Revenue Tribunal, which, in turn, while

maintaining dismissal of the application observed that if law permits, the petitioner would be entitled to make an application under Section 37/39 of the Act. In view of the said observations, the respondent made an application under Section 37 read with Section 39 of the Tenancy Act, the Mamlatdar rejected the application, but the appeal was allowed by the Deputy Collector, who, in his turn, remanded the matter to the Mamlatdar for decision afresh. A revision against the said order at the instance of the present petitioner was dismissed.

4. After the remand, the Mamlatdar cum ALT renumbered the case as Tenancy Case No. 121/83, wherein the present petitioner raised objections that the matter was not maintainable under Section 37 read with Section 39 and directed restoration of possession to the respondent. Being aggrieved by the said order dated 27.1.86, the petitioner filed two appeals before the Deputy Collector, who again remanded the matter to the Mamlatdar vide his order dated 28.11.87. The petitioner thereafter challenged the order

dated 28.11.87 and submitted to the Gujarat Revenue Tribunal in Revision Application No. 64/88 that the Deputy Collector, instead of remanding the matter, should have decided the matter on merits. The respondent also being aggrieved by the order of remand filed Revision Application No. 337/88. By order dated 28.3.92, the Gujarat Revenue Tribunal dismissed both the revisions. The order is now challenged by the present petitioner only.

5. Shri S.R. Patel, learned counsel for the petitioner submits that the wholesale remand made by the Deputy Collector was improper and as the material was already available with the Deputy Collector, he should have decided the matter on merits. His submission is that in case like present, where the matter is pending for almost about 34 years, a remand would unnecessarily delay the matter. Learned counsel for the respondents has opposed the submission.

6. So far as the question of delay is concerned, this Court must say that most of the delay is attributable to the present petitioner. The

Mamlatdar cum ALT passed order on 17.1.85, which came to be challenged by the petitioner, appeal was finally disposed of on 28th November, 1987. The petitioner was dissatisfied by the order of remand and therefore, filed revision application no. 64/88 before the Gujarat Revenue Tribunal. If the Gujarat Revenue Tribunal was of the opinion that the remand was proper, then, instead of challenging the said order and to avoid further delay, the petitioner could take part in the proceedings. Present petition came to be filed in the year 1992 and we are in 2007. The petitioner, as it appears from the records, was happy and content with the admission of the petition and grant of the interim order. If he was interested in avoiding the delay, he could, at least make an application to the Court that the matter may be disposed of at its earliest. When a matter remains pending for a period of 15 years, then, question of delay in disposal of the matter would not assume any importance.

7. The Gujarat Revenue Tribunal, in para-8 of its

order has considered all the arguments and has observed that the application before the Mamlatdar was under Section 37/39 of the Act. On a preliminary issue, the Mamlatdar, vide his order dated 16.11.82 rejected the application seeking rejection of the main application filed under Section 37/39 of the Act. The Deputy Collector has remanded the matter on the ground that opportunity of hearing should have been given to Vinodbhai Gordhanbhai Patel and Shantaben Chhotalal Patel. If that was the order passed by the Deputy Collector, then, there was nothing wrong in the said order. When law requires that opportunity should be provided, then, remand on the ground to provide opportunity cannot be termed to be invalid. I do not find any reason to interfere. The petition deserves to and is accordingly dismissed. Rule is discharged. No costs. Interim relief, if any, is vacated.

[R.S.GARG, J.]

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